

Town of Orchard Park, NY
Friday, December 2, 2011

Chapter 12. ETHICS

[HISTORY: Adopted by the Town Board of the Town of Orchard Park 3-5-2003 by L.L. No. 2-2003. Editor's Note: This chapter also repealed former Ch. 12, Ethics, consisting of Art. I, Board of Ethics, adopted as Subpart C of the 1970 Code; and Art. II, Code of Ethics, adopted as Subpart D of the 1970 Code, as amended. Amendments noted where applicable.]

Article I. Substantive Provisions

§ 12-1. Definitions.

Unless otherwise stated or unless the context otherwise requires, when used in this Code the following shall have the meanings indicated:

APPEAR AND APPEAR BEFORE

Communicating in any form, including, without limitation, personally, through another person, by letter, telephone, or by any other device.

CUSTOMER OR CLIENT

Any entity or person to whom an officer or employee of the Town of Orchard Park or his or her outside employer or business has supplied goods or services during the previous calendar year having, in the aggregate, a value greater than \$2,000.

FINANCIAL BENEFIT

Any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity or other compensation of anything of value, or any promise thereof.

HOUSEHOLD

All persons living in a single residence whether related or not.

OUTSIDE EMPLOYER OR BUSINESS

Any activity or entity, other than the Town of Orchard Park, of which a Town officer or employee is an owner, partner, director, officer, employee or member and from which he or she receives compensation for services rendered or goods sold or produced, or any entity in which he or she has an ownership interest except a corporation in which he or she owns less than 5% of the outstanding stock.

RELATIVE

A spouse, child, step-child, stepparent or any person who is a direct descendant of the grandparents of the reporting individual or of the reporting individual's spouse, and the spouses of the aforementioned persons.

TOWN OFFICER OR EMPLOYEE

Any officer, employee or appointee of the Town of Orchard Park, whether paid or unpaid, which includes, without limitation, all members of any board, commission, committee or other agency thereof, excluding a judge or justice of the Unified Court System and members of temporary advisory committees.

§ 12-2. Standards of conduct for Town officers and employees.

A. General prohibition. A Town officer or employee shall not use his or her official position or office to take or fail to take any action in a manner which he or she knows or has reason to know may result in a personal financial benefit for any of the following persons:

- (1) The Town officer or employee;
- (2) His or her outside employer or business;
- (3) A member of his or her household;
- (4) A customer or client; or
- (5) A relative.

- B. Recusal. A Town officer or employee shall promptly recuse himself or herself from acting on a matter before the Town when acting on the matter, or failing to act on the matter, may financially benefit any of the persons listed in Subsection A of this section.
- C. Gifts. A Town officer or employee shall not directly or indirectly solicit, accept or receive any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, material goods, thing or promise or any other form, under circumstances in which it could reasonably be inferred or could reasonably be expected that the gift was intended to influence such officer or employee in the performance of his or her official duties or was intended as a reward for any official action or inaction. Under no circumstances shall an officer or employee accept any gift in excess of the values set forth pursuant to New York State law.
- D. Representation. A Town officer or employee shall not represent any other person in any matter that person has before the Town nor represent any other person in any matter against the interests of the Town.
- E. Appearances. A Town officer or employee shall not appear before any agency of the Town except on his or her own behalf or on behalf of the Town.
- F. Confidential information. Town officers and employees and former officers and employees shall not disclose any confidential information or use it to further anyone's personal interests.
- G. Political solicitation. A Town officer or employee shall not knowingly request or authorize anyone else to request any subordinate of the officer or employee to participate in an election campaign or contribute to a political committee. This provision shall not prohibit general mailings or solicitations.
- H. Future employment. A Town officer or employee shall not, within two years after the termination of service or employment with the Town, appear before any board or agency of the Town of Orchard Park in relation to any case, proceeding or application in which he or she personally participated during the period of his or her service or employment or which was under his or her active consideration.
- I. Avoidance of conflicts. Town officers and employees shall not knowingly acquire, solicit, negotiate for, or accept any interest, employment, or other thing of value which would put them in violation of this chapter.
- J. Inducement of others. A Town officer or employee shall not induce or aid another officer or employee of the Town to violate any of the provisions of this chapter.
- K. No person shall be employed under the supervision of any person described in § 12-2A(2) through (5). Any person employed under the supervision of such person at the time of the adoption of this local law *Editor's Note: "This local law" refers to L.L. No. 2-2009.* shall be exempt from this local law.

[Added 2-4-2009 by L.L. No. 2-2009 *Editor's Note: This local law also repealed former Subsection K, Insurance Brokers Committee.*]

§ 12-3. Annual disclosure.

- A. The following individuals shall submit an annual disclosure statement:

[Amended 2-4-2009 by L.L. No. 2-2009]

- (1) All elected officials;
- (2) All department heads;
- (3) All members of the Zoning Board, Planning Board, Board of Ethics, Trails Task Force, Board of Assessment Review, Economic Development Board, Historic Preservation Board, Insurance Review Committee, Library Board, Open Space Preservation and Farmland Protection Task Force, Public Safety Committee, Recreation Commission, Youth Board, Computer and Information Advisory Commission, Architectural Overlay, Energy Conservation and Comprehensive Plan Implementation Committee.

[Amended 5-25-2011 by L.L. No. 2-2011]

- B. Time and place for filing. A Town officer or employee shall file the required annual disclosure statement with the Town Clerk:
 - (1) Initially, within 120 days after the effective date of this section; or
 - (2) Subsequently within 60 days after first becoming subject to the requirements of Subsection A of this section; and
 - (3) No later than March 1 of each year thereafter.

C. Changes in disclosed information. Within 30 days after any change in the information contained in his or her most recently filed annual disclosure statement, a Town officer or employee shall file with the Town Clerk a signed amendment to his or her statement indicating the change(s).

D. Contents and form of annual disclosure statement.

(1) The annual disclosure statement shall include the identification of any:

- (a) Real property located within the Town or contiguous to the boundary of the Town in which the Town officer or employee, his or her spouse or any member of his or her household has a financial interest;
- (b) Self-employment or outside employer or business of the Town officer or employee, his or her spouse or any member of his or her household which has a business interest with the Town of Orchard Park or any of its agencies or may reasonably be expected to solicit such business; and
- (c) Investments or interests of the Town officer or employee, his or her spouse, any member of his or her household or any of his or her relatives in any business, corporation, partnership, association or other entity which has a business interest with the Town of Orchard Park or any of its agencies or may reasonably be expected to solicit such business.

(2) The form and any additional contents of the annual disclosure statement shall be determined by the Ethics Board.

§ 12-4. Transactional disclosure.

Whenever a Town officer or employee is required to recuse himself or herself under this chapter, he or she shall:

- A. Immediately refrain from participating further in the matter;
- B. Promptly inform his or her superior, if any; and
- C. Promptly file with the Town Clerk a signed statement disclosing the nature and extent of the prohibited action or, if a member of a board, shall state that information upon the public record of that board.

§ 12-5. Applicant disclosures.

- A. Whenever an application, petition or request is submitted for an officer or employee of a board, commission, committee, department or other agency of the Town to take or refrain from taking any action (other than a ministerial act) that may result in a financial benefit to any person listed in § 12-2A of this chapter, the applicant shall disclose the name and address of and the nature of the financial benefit to such person in the application, petition or request to the extent known to the applicant at the time of submission.
- B. Any board, commission, committee, department or other agency of the Town, which receives an applicant disclosure pursuant to Subsection A of this section, shall promptly file such applicant disclosure with the Town Clerk.
- C. The following statement will be read aloud at the beginning of every public meeting of every board, commission, committee or other agency of the Town:

"Any person appearing before this (board, commission, committee, agency) who is a relative of, or who has a financial or business relationship with any officer or employee of the Town of Orchard Park must disclose the nature and extent of such relationship in accordance with the provisions of the Ethics Law of the Town of Orchard Park."

§ 12-6. Inducement of violations.

No person shall induce or attempt to induce any other person to violate any of the provisions of this chapter.

§ 12-7. Penalties for offenses.

- A. Any Town officer or employee who engages in any action that violates any provision of this chapter may be warned or reprimanded or suspended or removed from office or employment, or be subject to any other sanction authorized by law or collective bargaining agreement, by the appointing authority or person or body authorized by law to impose such sanctions. A warning, reprimand, suspension, removal, or other authorized sanction may be imposed in addition to any other penalty contained in this chapter or in any other provision of law.
- B. Any person, whether or not a Town officer or employee, who knowingly and intentionally violates any provision of this chapter may be subject to a fine not exceeding \$250 and/or imprisonment not exceeding 15 days.

§ 12-8. Injunctive relief.

- A. Any person may initiate an action or special proceeding, as appropriate, in the court of appropriate jurisdiction for injunctive relief to enjoin an officer or employee of the Town from violating this chapter or to compel an officer or employee of the Town to comply with the provisions of this chapter. In lieu of, or in addition to injunctive relief, the action or special proceeding, as appropriate, may seek a declaratory judgment.
- B. No action or special proceeding shall be prosecuted or maintained pursuant to Subsection A of this section, unless:
 - (1) The plaintiff or petitioner shall have filed with the Ethics Board a sworn complaint alleging the violation by the officer or employee;
 - (2) It shall appear by and as an allegation in the complaint or petition filed with the court that at least six months have elapsed since the filing of the complaint with the Ethics Board and that the Ethics Board has failed to file a determination in the matter; and
 - (3) The action or special proceeding shall be commenced within 10 months after the alleged violation occurred.

Article II. Administrative Provisions

§ 12-9. Designation of officers and employees required to file annual disclosure statements.

- A. Within 60 days after the effective date of this chapter, and on or before January 31 of each year thereafter, the Supervisor of the Town shall:
 - (1) Cause to be filed with the Ethics Board and the Town Clerk a list of the names and offices or positions of all Town officers and employees required to file annual disclosure statements pursuant to § 12-3 of this chapter; and
 - (2) Notify all such Town officers and employees of their obligation to file an annual disclosure statement.
- B. For any newly elected or appointed Town officer or employee and for any other person for whom a determination has been made that he or she is required to file an annual disclosure statement pursuant to § 12-3 of this chapter and such determination is made after the list prepared pursuant to Subsection A of this section has been filed for that year, the Supervisor shall promptly file the name and office or position of such Town officer or employee or other person with the Ethics Board and the Town Clerk and notify such Town officer or employee or other person of his or her obligation to file an annual disclosure statement.

§ 12-10. Maintenance of disclosure statements.

- A. The Town Clerk shall transmit promptly to the Ethics Board a copy of each disclosure statement filed pursuant to §§ 12-3, 12-4 and 12-5 of this chapter.
- B. The Town Clerk, on behalf of the Ethics Board, shall index and maintain on file for at least seven years all disclosure statements filed pursuant to §§ 12-3, 12-4 and 12-5 of this chapter.
- C. All disclosure statements filed pursuant to §§ 12-3, 12-4 and 12-5 of this chapter shall be made available for public review subject to the provisions of Article 6 (Freedom of Information Law) of the Public Officers Law of the State of New York.

§ 12-11. Ethics Board: establishment; qualifications of members; appointment of members; term of office.

- A. There is hereby established an Ethics Board consisting of five members.
- B. All members of the Ethics Board shall be residents of the Town of Orchard Park.
- C. No member of the Ethics Board shall hold elective office in the Town of Orchard Park.
- D. One, but no more than one member of the Ethics Board shall be an officer or employee of the Town.
- E. Within 60 days after the effective date of this chapter, and in January of each year thereafter, the Town Board shall appoint the members of the Ethics Board.
- F. The members of Ethics Board shall be appointed for staggered terms of five years. However, the first Ethics Board appointed under this provision shall consist of five members appointed for terms expiring respectively on December 31 of the first, second, third, fourth, and fifth calendar years following the calendar year of appointment. Upon expiration of each term, an appointment shall be made for the following five-year term. Within 60 days after the effective date of this chapter and at its annual organizational meeting, the Town Board shall appoint the members of the Ethics Board.
- G. An Ethics Board member shall serve until his or her successor has been appointed.

H. The members of the Ethics Board shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

I. No member of the Ethics Board shall make a contribution to or participate in any Town of Orchard Park political campaigns pertaining to any Town office.

[Added 2-4-2009 by L.L. No. 2-2009]

J. Consecutive service on the Ethics Board shall not exceed two full-time terms, a total of 10 years.

[Added 2-4-2009 by L.L. No. 2-2009]

§ 12-12. Ethics Board: vacancies.

When a vacancy occurs in the membership of the Ethics Board, the vacancy shall, within 60 days, be filled for the unexpired portion of the term in the same manner as the original appointment. Any person appointed to fill a vacancy of the Ethics Board shall meet the qualifications set forth in § 12-11 of this chapter.

§ 12-13. Ethics Board: removal of members.

A member of the Ethics Board may be removed from office in the same manner in which he or she was appointed, after written notice and opportunity for reply. Grounds for removal shall be failure to meet the qualifications set forth in § 12-11 of this chapter, substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office, or violation of this chapter.

§ 12-14. Ethics Board: minutes.

A. The Town Board shall provide legal and clerical assistance to the Ethics Board as required.

B. The official minutes of meetings and case hearings will be approved by the Ethics Board.

C. The official minutes will be recorded and filed with the Town Clerk.

D. The minutes of case hearings will be confidential.

§ 12-15. Ethics Board: meetings.

A. The Ethics Board shall conduct an organizational meeting in January of each year, at which time a chair and a vice-chair shall be elected from among its members.

B. The Ethics Board shall conduct a sufficient number of meetings each year to fulfill its obligations pursuant to §§ 12-17, 12-22 and 12-23 of this chapter, and at such additional times as may be necessary to promptly discharge its duties pursuant to §§ 12-18, 12-19 and 12-20 of this chapter.

C. An official meeting of the Ethics Board shall require a quorum of three members.

D. A majority vote of the full Ethics Board shall be required for the Ethics Board to take any action.

E. The chair, vice-chair or a majority of the full Ethics Board may call a meeting of the Ethics Board.

§ 12-16. Ethics Board: jurisdiction, powers, and duties.

A. The termination of a municipal officer's or employee's term of office or employment with the Town shall not affect the jurisdiction of the Ethics Board with respect to the requirements imposed on him or her by this chapter.

B. The Ethics Board shall have the following powers and duties:

(1) To prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner consistent with this chapter;

(2) To review, index and maintain on file all disclosure statements filed pursuant to §§ 12-3, 12-4 and 12-5 of this chapter;

(3) To investigate, index and maintain on file all complaints filed pursuant to § 12-18 of this chapter;

(4) To conduct hearings, recommend disciplinary action, make referrals and initiate appropriate actions and proceedings pursuant to § 12-19 of this chapter;

(5) To render, index and maintain on file, advisory opinions pursuant to § 12-20 of this chapter;

- (6) To provide training and education to Town officers and employees pursuant to § 12-22 of this chapter;
- (7) To prepare an annual report and recommend changes to this chapter pursuant to § 12-23 of this chapter;
- (8) To provide for public inspection of certain records pursuant to § 12-24 of this chapter; and
- (9) To select provisions of this chapter for reproduction and distribution pursuant to § 12-25 of this chapter.

§ 12-17. Review of list and disclosure statements.

A. The Ethics Board shall review:

- (1) The list of Town officers and employees filed pursuant to § 12-9 of this chapter in order to determine whether such list is complete and accurate. The Ethics Board shall promptly notify the Supervisor of the Town of the name and office or position of any other person not included on the list whom the Ethics Board determines is required to file an annual disclosure statement pursuant to § 12-3 of this chapter;
- (2) All annual disclosure statements filed with the Town Clerk pursuant to § 12-3 of this chapter in order to determine whether any person required to file an annual disclosure statement has failed to file such a statement or has filed a deficient statement or has filed a statement that reveals a possible or potential violation of this chapter; and
- (3) All transactional and applicant disclosure statements filed with the Town Clerk pursuant to §§ 12-4 and 12-5 of this chapter in order to determine whether any further action is required under the provisions of this chapter.

- B. If the Ethics Board determines that any person required to file a disclosure statement pursuant to §§ 12-3, 12-4 or 12-5 of this chapter has failed to file such a statement or that any disclosure statement filed with the Town Clerk is deficient or reveals a possible or potential violation of this chapter, the Ethics Board shall promptly notify the person in writing of his or her failure to file or of the deficiency or of the potential violation and of the penalties for failure to comply with the provisions of this chapter.

§ 12-18. Investigations.

- A. Upon receipt of a signed, written complaint by any person alleging a violation of this chapter, or upon determining on its own initiative that a violation of this chapter may exist, the Ethics Board shall have the power and duty to conduct any investigation necessary to carry out the provisions of this chapter.
- B. For every signed, written complaint it receives and every investigation it conducts, the Ethics Board shall file a statement of determination with the Town Clerk when the matter is decided.
- C. Any person filing a signed, written complaint with the Ethics Board shall be notified in writing when the matter is decided.
- D. Nothing in this section shall be construed to permit the Ethics Board to conduct an investigation of itself or of any of its members or staff. If the Ethics Board receives a complaint alleging that the Ethics Board or any of its members or staff has violated any provision of this chapter or any other law, the Ethics Board shall promptly transmit to the Town Board a copy of the complaint.

§ 12-19. Hearings; assessment of penalties; injunctive relief.

- A. Disciplinary action. In its discretion, after a hearing providing for due process procedural mechanisms and subject to any applicable provisions of law, the Ethics Board may recommend appropriate disciplinary action pursuant to § 12-7 of this chapter. The recommendation of the Ethics Board shall be made to the appointing authority or person or body authorized by law to impose such sanctions. The Ethics Board shall conduct and complete the hearing with reasonable promptness, unless in its discretion the Ethics Board refers the matter to the authority or person or body authorized by law to impose disciplinary action or unless the Ethics Board refers the matter to the appropriate prosecutor. If such referral is made, the Ethics Board may adjourn the matter pending determination by the authority, person, body, or prosecutor.
- B. Injunctive relief. The Town Board, or the Ethics Board on behalf of the Town, may initiate an action or special proceeding, as appropriate, in the court of appropriate jurisdiction for injunctive relief to enjoin a violation of this chapter or to compel compliance with this chapter, as provided in § 12-8 of this chapter.
- C. Prosecutions. The Ethics Board may refer to the appropriate prosecutor possible criminal violations of this chapter. Nothing contained in this chapter shall be construed to restrict the authority of any prosecutor to prosecute any violation of this chapter or of any other law.

§ 12-20. Advisory opinions.

- A. Upon the written request of any Town officer, employee, or member of a Town agency or board, the Ethics Board shall

render a written advisory opinion with respect to the interpretation or application of this chapter or of Article 18 of the General Municipal Law of the State of New York as to whether the Town officer's or employee's interest in any matter which comes before the officer or employee for his or her determination, decision or recommendation conflicts with his or her official duties. The decision of the Ethics Board shall be rendered promptly.

- B. Any person presenting a matter to a Town officer or employee or to a Town agency or board, other than a court, may submit a similar request but only with respect to whether his or her own action might violate a provision of this chapter or Article 18 of the General Municipal Law.
- C. Upon request for an advisory opinion concerning a Town officer or employee, he or she shall refrain from taking any action or participating in any hearing or discussion of the matter until an advisory opinion is rendered.
- D. A prospective officer or employee may submit a request for an advisory opinion as to whether he or she has an interest, which may conflict with the position, offered or contemplated.
- E. The opinion rendered shall be based only on the facts, which are fully and accurately presented to the Ethics Board. If the Ethics Board subsequently receives different or additional facts, it may revise the opinion after giving notice to the applicant offering him or her the opportunity of explaining or refuting such facts.
- F. Advisory opinions shall be confidential. Copies of such advisory opinions shall be sealed, indexed and maintained on file by the Ethics Board at the Town Clerk's Office.

§ 12-21. Judicial review.

Any person aggrieved by an advisory opinion or decision of the Ethics Board may seek judicial review and relief pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York.

§ 12-22. Training and education.

The Ethics Board shall:

- A. Make information concerning this chapter and Article 18 of the General Municipal Law available to the officers and employees of the Town, to the public and to persons interested in doing business with the Town; and
- B. Develop educational materials and an educational program for the officers and employees of the Town on the provision of this chapter and on Article 18 of the General Municipal Law.

§ 12-23. Annual reports; review of Ethics Law.

- A. The Ethics Board shall prepare and submit an annual report to the Supervisor and Town Board, summarizing the activities of the Ethics Board. The report may also recommend changes to the text or administration of this chapter. An annual report shall be submitted by the Ethics Board prior to March 1 of each year.

[Amended 2-4-2009 by L.L. No. 2-2009]

- B. The Ethics Board shall periodically review this chapter and its rules, regulations, and administrative procedures to determine whether they promote integrity, public confidence, and participation in Town government and whether they set forth clear and enforceable, common sense standards of conduct.

§ 12-24. Public inspection of records; public access to meetings.

- A. The only records of the Ethics Board which shall be available for public inspection are those whose disclosure is required by Article 6 (Freedom of Information Law) of the Public Officers Law of the State of New York or by some other state or federal law or regulation.
- B. No meeting or proceeding of the Ethics Board concerning misconduct, nonfeasance, or neglect in office by a Town officer or employee shall be open to the public, except upon the request of the officer or employee or as required by the provisions of Article 7 (Open Meeting Law) of the Public Officers Law or by some other state or federal law or regulation.

§ 12-25. Distribution to officers and employees.

- A. Every Town officer and employee shall be furnished an annual disclosure statement form and a copy of selected provisions of the Ethics Law in the month of January of each year or at the time of his or her employment or appointment with the Town.
- B. Copies of the entire text of the Ethics Law shall be made available to the public at the office of the Town Clerk.
- C. Failure of the Town to comply with the provisions of this section or failure of any Town officer or employee to receive a

copy of the provision of this chapter shall have no effect on the duty of compliance with this chapter or on the enforcement of its provisions.